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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,377	09/12/2003	Gary Werschmidt	CMED.01US01	6697
27479	7590	06/09/2005	EXAMINER	
COCHRAN FREUND & YOUNG LLC 2026 CARIBOU DR SUITE 200 FORT COLLINS, CO 80525			VU, STEPHEN A	
			ART UNIT	PAPER NUMBER
			3636	

DATE MAILED: 06/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/661,377

Applicant(s)

WERSCHMIDT, GARY

Examiner

Stephen A. Vu

Art Unit

3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/12/03, 2/17/04, 4/19/04.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12 and 21-23 is/are allowed.
- 6) ☒ Claim(s) 1-11, 13-16, and 24-34 is/are rejected.
- 7) ☒ Claim(s) 17-20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2/17/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities: on page 8, line 9, "2" should be changed to - 4- -.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-11 and 34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 1,4, and 34, the limitations state "each said posterior connector may be independently rotatably positioned about a coplanar arc of movement" and "each said anterior articulating connector that may be independently rotatably positioned about a coplanar arc of movement". However, it appears that the posterior connector and the articulating connector can't be physically rotatable. They appear to be fixed to the lateral braces. Please clarify.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3636

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-7,13-16, and 24-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Castelot et al (#4,508,384) in view of McInturff (#5,954,402).

Castelot et al show a device comprising a central support chassis comprising two articulating connector pairs (14a) joined by at least one lateral brace (12). The position of an anterior articulator connector (14a) is fixed relative to a posterior articulating connector (14a). A head and thorax support frame (22) may be independently rotatably positioned via the posterior connector (14a) about a coplanar arc of movement. A lower extremity support frame (23) may be independently rotatably positioned via the anterior articulating connector (14a) about a coplanar arc of movement. A transverse brace (12) is rigidly joined by the articulating connector pairs. A positioning stand comprises an anterior chassis support frame (21) and a posterior support frame (22). The anterior chassis support frame is connected to the anterior articulating connectors. The posterior chassis support frame is connected to the posterior articulating connectors. A head and thorax support frame (22) is connected to the posterior

Art Unit: 3636

articulating connectors. However, Castelot et al do not show the lateral braces (12) can be adjusted. McInturff teaches a device (10) that can be adjusted with member (26) telescoping within member (24). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the lateral braces (12) of Castelot et al's invention to be adjustable as taught by McInturff, in order to allow a user to adjust the length of the lateral braces to accommodate the user's body size.

With claim 2, a lower extremity support frame (23) is connected to the anterior articulating connectors.

With claim 3, a drape of support material (15) is attached and extending across the head and thorax support frame.

Allowable Subject Matter

Claims 8-11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 12 and 21-23 are allowed.

Claims 17-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Art Unit: 3636

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mugler, White, Jay, Wunderlich, and Haynes are cited as showing similar types of device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen A. Vu whose telephone number is 571-272-6862. The examiner can normally be reached on M-Th from 8:30 am to 7:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Stephen Vu
June 7, 2005